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OFFICE OF GENERAL
COUNSEL

BEFORE THE
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ORIGINAL

In The Matter Of:

Democratic Congressional Campaign Committee)
A Federal National Party Committee)

v.)

Matter Under Review # 6391

Commission on Hope, Growth & Opportunity)
A Tax-Exempt, 501c(4) Social Welfare Organization)

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MOTION TO DISMISS

Now comes the Commission on Hope, Growth & Opportunity (the "CHGO"), a social welfare organization conducting its public education activities pursuant to section 501c(4) of the Internal Revenue Code of 1986, amended, by and through its General Counsel, and presents to the Federal Election Commission (the "Commission") this Motion to Dismiss the above captioned Matter Under Review for the reasons set forth below.

The Law: The Federal Election Campaign Act of 1971, amended, at 2 United States Code § 437g(a), styled as "Enforcement – Administrative and Judicial Practice and Procedure", provides, in pertinent part, that "[W]ithin 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation."

Similarly, the Regulations promulgated by the Commission at 11 C.F.R. § 111.5(a), styled as "Initial Complaint Processing; Notification", provides, at pertinent part, that "[U]pon receipt of a complaint, the General Counsel shall review the complaint for substantial compliance with the technical requirements of 11 C.F.R. 111.4, and, if it complies with those requirements shall within five (5) days after receipt notify each respondent that the complaint has been filed, advise them of Commission compliance procedures, and enclose a copy of the complaint."

The Regulations further provide, at 11 C.F.R. § 111.6(b), that the Commission is precluded from taking any action on the complaint and against a respondent until such time as the respondent has had an opportunity to demonstrate that no action should be taken, except that the respondent may move an action to dismiss the complaint for procedural reasons, before providing a formal response to the complaint.

The Facts: On or about October 4, 2010, the complainant, through its Executive Director, Jon Vogel, caused the complaint at issue in this Motion to be executed and notarized. On October 5, 2010, the complaint at issue in this Motion was the subject of an extensive news report on the front page of the daily newspaper, the Politico. This article was written by John Bresnahan and Alex Vogel. On October 7, 2010, the complaint at issue in this Motion was received at the Commission and time-stamped at 10:52AM. On or about October 15, 2010, the complaint at issue in this Motion was mailed to the respondent. Between the date of the receipt of the complaint by the Commission, on October 7, 2010, and the date that the complaint was delivered to the U.S. Postal Service for delivery to the respondent, on or about October 15, 2010, a full eight (8) calendar days or six (6) business days had elapsed. This time lapse was in excess of the mandated notification provision found at 11 C.F.R. § 111.5(a) and thus the Commission's notification dated October 15, 2010 was, on its face, defective.

In fact, the Commission's notification dated October 15, 2010 was **NEVER** received by the respondent. A review of the address to which the notification dated October 15, 2010 was posted (see Exhibit "A") was incorrect, such error being a direct consequence of a mistake made by the office of the General Counsel. On or about November 16, 2010, Ms. Kim Collins of the General Counsel's office called Counsel for the respondent to inquire when the Commission could expect respondent's reply to the complaint. At that point, Counsel informed Ms. Collins that the Commission's notification had never been received. Ms. Collins expressed surprise and indicated that the Commission would repost the notification dated October 15, 2010. Thereafter, Counsel called Ms. Collins, on November 29, 2010, to inform her that the Commission's notification dated October 15, 2010 had finally been received at Counsel's and respondent's office of record. Ms. Collins indicated her belief that the delay had been caused by the Commission's staff, in that they had employed an incorrect address for the notification of October 15, 2010.

The correct address for CHGO is a matter of public record. In fact, the complainant used the proper address in the heading of the complaint. In addition, the complainant also included, in the complaint (see Exhibit "B"), a link to the website currently maintained by the respondent. Had the Commission staff carefully reviewed the address for CHGO used by the complainant or accessed the website of the respondent (see Exhibit "C"), the Commission could have determined the correct address to use in forwarding the notification dated October 15, 2010. For whatever reasons, this fundamental procedural step was not taken and the Commission's notification dated October 15, 2010. As set forth above, the Commission's "due process" notification of October 15, 2010 was not remailed by the Commission until November 16, 2010 and was not received by the respondent until November 29, 2010 (see Exhibit "D"). Thus respondent was unable to even review the allegations contained in the complaint for a full six (6) weeks after it had been first received by the Commission.

Discussion: It is inarguable that the statutory and regulatory requirements for timely notification to a respondent of the existence of a complaint received by the Commission (referenced above and incorporated herein), is based both on the notion of fundamental fairness and on Constitutionally-protected "due process" considerations. Quite clearly, the framers of these two provisions were clear in their belief that any respondent to an allegation of a statutory violation must be (a) made aware of such an allegation in a very timely manner and (b) provided with the opportunity to provide a response to any such allegation in an equally timely manner. Unfortunately, in this instance, CHGO was denied the required timely notice and opportunity to respond, to the material detriment of its reputation.

Quite clearly, the complainant "leaked" the existence of this complaint to Politico prior to its filing with the Commission. The authors of the Politico article, which appeared on the morning of October 5, 2010, quite obviously were fully informed of the allegation contained in the complaint. Upon information and belief, the co-author of the Politico article, Alex Vogel, and the Executive Director of the complainant, Jon Vogel, are related by blood. Upon information and belief, Jon Vogel was the source of the advanced notification of the allegations contained in the complaint that became the Politico report of October 5, 2010.

The reputation of CHGO was materially impacted by the leak of the complaint to Politico and by the Commission's failure to follow its own procedural rules regarding the timely notification to a respondent of a complaint received by the Office of General Counsel. Following the Politico article of October 5, 2010, Counsel to the respondent was the recipient of innumerable telephone calls from national and local media outlets regarding the complaint and the response of CHGO to the allegations. Every single news story about CHGO following the Politico article of October 5, 2010 referred to the complaint and asserted that because of the complaint, CHGO was under investigation by an agency of the federal government. Having never received the complaint from the Commission, Counsel to the respondent was unable to provide any response to such media inquiries. As a direct consequence, the ability to CHGO to carry out its tax-exempt public education mission was materially and adversely impacted. Arguendo, it appears quite likely that this was the exact impact sought by the complainant in leaking the existence of the complaint to Politico on or about October 4, 2010. That the complainant cared little for the due process rights of the respondent is evidenced by the fact that the complainant executed the complaint and leaked it to Politico on October 4, 2010 but failed to actually file the complaint with the Commission until October 7, 2010.

Prayer for Relief: CHGO asks the Commission to grant this Motion to Dismiss the complaint for the reason that in failing to follow the statutory and regulatory-mandated timely notice requirements (referenced above and incorporated herein), CHGO was denied its Constitutionally-protected "due process" rights and was denied procedural fundamental fairness by the Commission.

In presenting this Motion to Dismiss, CHGO maintains all of the administrative and/or judicial procedural rights available to it under federal law and does not waive any such administrative and judicial rights.

By: _____

William B. Canfield III
Counsel to the Commission on Hope, Growth & Opportunity
Suite 600, 1900 M Street, N.W.
Washington, D.C. 20036

Dated at Washington, D.C. on November 30, 2010

EXHIBIT "A"



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 15 2010

William B. Canfield
Commission on Hope Growth & Opportunity
1900 M Street, NW Suite 600
Washington, DC 20003

Re: MUR 6391

Dear Mr. Canfield:

The Federal Election Commission received a complaint that indicates the Commission on Hope Growth & Opportunity may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 6391. Please refer to this number in all future correspondence.

Under the Act you have the opportunity to demonstrate in writing that no action should be taken against the Commission on Hope Growth & Opportunity in this matter. Please submit any factual or legal materials that you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. Please note that you have a legal obligation to preserve all documents, records and materials relating to the subject matter of the complaint until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.



HONORABLE CHRIS VAN HOLLEN
CHAIRMAN

EXHIBIT "B" AND
EXHIBIT "C"

RECEIVED
FEDERAL ELECTION
COMMISSION

2010 OCT -7 AM 10:52

OFFICE OF GENERAL
COUNSEL

BEFORE THE
FEDERAL ELECTION COMMISSION

Jon Vogel,
Executive Director
Democratic Congressional Campaign Committee
430 South Capitol St., SE
Washington, DC 20003,

MUR # 6391

Complainant,

v.

Commission on Hope, Growth & Opportunity
1900 M Street, NW Suite 600
Washington, D.C. 200036
(202) 530-3332

Respondent.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against the Commission on Hope, Growth & Opportunity ("Respondent") for violations of the Federal Election Campaign Act ("Act"), as described below.

A. FACTS

Respondent is an organization that claims to be "registered under section 501(c)(4) of the IRS."¹ As of October 1, 2010, it was not a registered political committee.

Based on information and belief, from September 24, 2010 through September 30, 2010, Respondent disseminated broadcast television advertisements attacking Congressman John

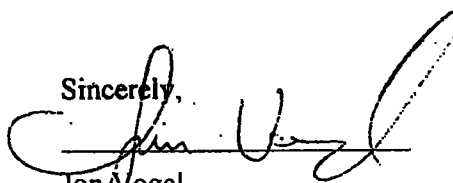
¹ See <http://www.hopegrowthopportunity.com/> (last visited on October 1, 2010).



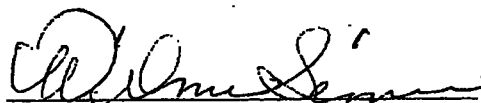
D. REQUESTED ACTION

As we have shown, there is substantial evidence that Respondent has violated the Federal Election Campaign Act. We respectfully request the Commission to investigate these violations. Should the Commission determine that Respondents have violated FECA, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,


Jon Vogel

SUBSCRIBED AND SWORN to before me this 24 day of October, 2010.


Notary Public

My Commission Expires:
~~When Signed~~
Notary Public, District of Columbia
My Commission Expires 7/31/2012

EXHIBIT "C"

COMMISSION ON HOPE, GROWTH & OPPORTUNITY

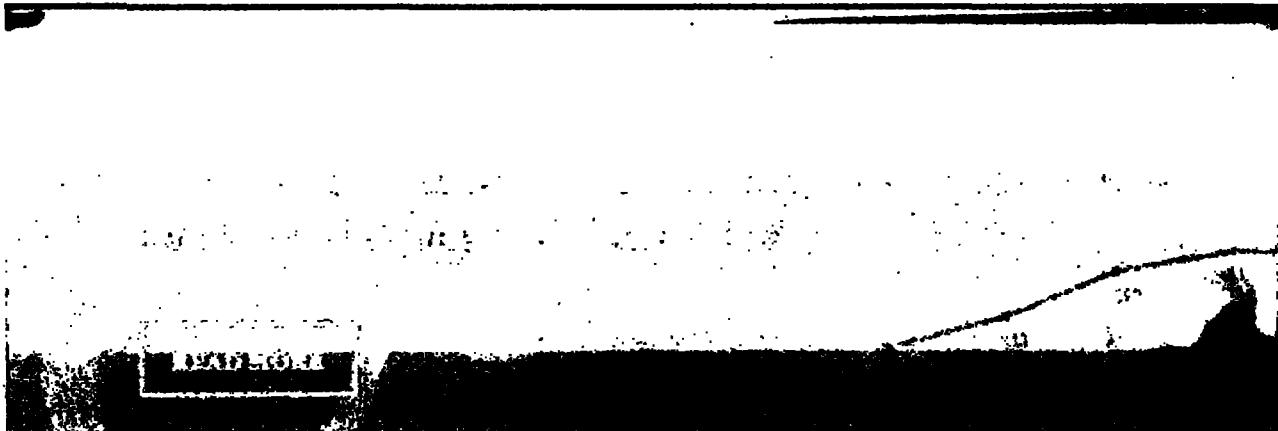
Supporting Policies of Economic Growth and Free Enterprise

MISSION

NEWS/MEDIA

ISSUE FOCUS

LATEST



Paid for by the Commission on Hope, Growth and Opportunity, a tax exempt, non-profit, social welfare organization registered with the IRS. Not a federal political committee.

Commission on Hope, Growth & Opportunity | 1900 M Street, NW | Suite 600 | Washington, DC 20036

COMMISSION ON
HOPE, GROWTH & OPPORTUNITY
Supporting Policies of Economic Growth and Free Enterprise

501(c)(4) Non-Profit Organization

[MISSION](#)

[NEWS/MEDIA](#)

[ISSUE FOCUS](#)

[LATEST POLLING](#)

[CONTACT](#)

Thank you for your interest....

By email:

info@hopegrowthopportunity.com

By mail:

Commission on Hope, Growth & Opportunity
William B. Canfield, General Counsel
1900 M Street, NW Suite 600
Washington, DC 20036
202-530-3332

Due to high volume of contacts, we cannot guarantee a response
to all requests. Thanks.

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Commission on Hope, Growth & Opportunity | 1900 M Street, NW | Suite 600 | Washington, DC 20036 | 202-530-3332